

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JOSEPH GUGLIELMO	:	Case No. 3:17-cv-6
	:	
Plaintiff,	:	
	:	
vs.	:	Judge Thomas M. Rose
	:	
	:	
	:	
MONTGOMERY COUNTY, OHIO and THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS, et al.,	:	
	:	
Defendants.	:	

DEFENDANTS' MOTION TO CONTINUE TRIAL

Defendants, Montgomery County, Ohio and the Montgomery County Board of Commissioners, Sherriff Phil Plummer, Matthew Snyder, Zachary Zink, Matthew Sears, David Cohn, Brandon Ort, and Benjamin Cooper (collectively referred to as "Defendants"), by and through undersigned counsel, respectfully ask the Court to continue the Trial of this action, currently scheduled to begin on June 17, 2019. The reasons for this Motion are more particularly set forth in the following Memorandum.

MEMORANDUM

This action stems from an incident that began at the Montgomery County Jail just before midnight on January 15, 2015. In the day leading up to the incident, Plaintiff, Joseph Guglielmo ("Plaintiff"), had been arrested on multiple charges, including assault and resisting arrest, at the Gettysburg Gateway Homeless Shelter for Men in Dayton, Ohio. Plaintiff has sued multiple law enforcement officers of the Montgomery County Sheriff's Office, including Corrections Officers David Cohn ("Cohn"), Zachary Zink ("Zink"), Brandon Ort ("Ort), Benjamin Cooper ("Cooper")

and Sheriff's Deputy Matthew Sears ("Sears") and Sergeant Matthew Snyder ("Snyder"). Plaintiff's claims against those Defendants include civil rights claims under 42 Section 1983 for (1) excessive force, and (2) deliberate indifference to his serious medical needs. Plaintiff also sued Sheriff Plummer and the Montgomery County Board of County Commissioners, alleging failure to train or supervise the other Defendants, under *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658 (1978).

The parties engaged in extensive discovery throughout the litigation. Defendants then filed a Motion for Summary Judgment on June 14, 2018 (Doc. 123). Plaintiff filed a Response opposing the Motion (Doc. 134), and Defendants then filed a Reply in support (Doc. 142).

The legal issues raised in the the Motion for Summary Judgment are complex, and wide-ranging. The arguments included in the Motion are: (1) Defendants are entitled to qualified immunity; (2) Sergeant Snyder's use of force was not unconstitutional; (3) Plaintiff is unable to substantiate a "deliberate indifference" claim against Defendants; (4) the observing officers did not have the opportunity to intervene; (5) the "official capacity" claims must be dismissed; (6) Sheriff Plummer is not liable for any action taken in his personal capacity; and (7) Montgomery County is not liable.

The memoranda in support of, and in opposition to, the Motion for Summary Judgment are voluminous – the Motion (66 pages) and exhibits (200 pages) total 266 pages; Plaintiff's Response (68 pages) and exhibits (193 pages) total 261 pages; and the Reply was 28 additional pages (with an additional 3-page exhibit). Based on the volume of the briefs and exhibits, and the host of legal issues raised in the motion pleadings, it is understandable that a decision on the Motion for Summary Judgment has yet to be rendered.

Defendants believe all parties, and the Court, would be well-served in continuing the Trial of this action. Doing so will allow additional time for the Court to digest all of the summary judgment

materials, and render its decision. Further, the parties would then be in a better position to know the claims, defenses, and issues for Trial.

As matters currently stand, Trial is one month away. Defendants (and Plaintiff) are faced with uncertainty about which claims, defenses, and even which parties, will be included at Trial. Based on this uncertainty, Defendants believe it would serve the interests of judicial economy to continue the Trial for a reasonable time until after the Court renders its decision on the Motion for Summary Judgment.

In fact, even if a decision of the Motion for Summary Judgment was issued today, it would still be difficult to sort all of the issues in time to present an efficient Trial in one month from now, given the complexity of the issues. Granting this Motion to Continue the Trial will allow the parties the opportunity to fully examine the Court's decision of the legal issues, focus their Trial preparation accordingly, and ultimately, streamline the presentation of the claims and defenses at Trial.

The question of a continuance is addressed to the sound discretion of the district judge and will not be reversed on appeal unless there has been a clear abuse of discretion. *Pingatore v. Montgomery Ward & Co.*, 419 F.2d 1138, 1141 (6th Cir. 1969), cert. denied, 398 U.S. 928 (1970). For the reasons set forth throughout this Memorandum, Defendants ask the Court to exercise its discretion, and continue the Trial of this action scheduled for June 17, 2019.

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN

/s/ David E. Williamson

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Brandon Ort, and Benjamin Cooper*

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2019, a copy of the foregoing was filed electronically with the Clerk, which will give Notice of such filing to all parties by operation of the Court's CM/ECF system.

/s/ David E. Williamson

DAVID E. WILLIAMSON (0071270)